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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Note verbale dated 10 February 2009 from the Permanent Missions to the United Nations of Afghanistan, the Bahamas, Bahrain, Bangladesh, Barbados, Botswana, Brunei Darussalam, the Central African Republic, Chad, China, the Comoros, the Democratic People's Republic of Korea, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, the Gambia, Grenada, Guinea, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Kuwait, the Lao People's Democratic Republic, the Libyan Arab Jamahiriya, Malaysia, Maldives, Mongolia, Myanmar, the Niger, Nigeria, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Somalia, the Sudan, Swaziland, the Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Uganda, the United Arab Emirates, Yemen and Zimbabwe addressed to the Secretary-General

The permanent missions to the United Nations in New York listed below have the honour to refer to General Assembly resolution 63/168, entitled "Moratorium on the use of the death penalty", which was adopted by the Third Committee on 20 November 2008, and subsequently by the General Assembly on 18 December 2008 by a recorded vote. The Permanent Missions wish to place on record that they are in persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention to existing stipulations under international law, for the following reasons:

(a) There is no international consensus that the death penalty should be abolished. The votes on this resolution in the sixty-third session of the General Assembly have once again confirmed this fact, and that the issue continues to be a divisive one. Article 6 of the International Covenant on Civil and Political Rights states, inter alia, that "in countries which have not abolished the death penalty,

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sentences of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime";

(b) This view was reflected previously in:

(i) The note verbale contained in document A/62/658, in which 58 delegations expressed their persistent objection to any attempt to impose a moratorium on the application of the death penalty or its abolition in contravention to existing stipulations under international law, following the adoption of General Assembly resolution 62/149;

(ii) The joint statement contained in document E/CN.4/2005/G/40, in which 66 delegations disassociated themselves from Commission on Human Rights resolution 2005/59;

(iii) The joint statement contained in document E/CN.4/2004/G/54, in which 64 delegations disassociated themselves from Commission on Human Rights resolution 2004/67;

(iv) The joint statement contained in document E/CN.4/2003/G/84, in which 63 delegations disassociated themselves from Commission on Human Rights resolution 2003/67L;

(v) The joint statement contained in document E/CN.4/2002/198, in which 62 delegations disassociated themselves from Commission on Human Rights resolution 2002/77;

(vi) The joint statement contained in documents E/CN.4/2001/161 and Corr.1, in which 61 delegations disassociated themselves from Commission on Human Rights resolution 2001/68;

(vii) The joint statement contained in document E/CN.4/2000/162, in which 51 delegations disassociated themselves from Commission on Human Rights resolution 2000/65;

(viii) The joint statement contained in document E/1999/113, in which 50 delegations disassociated themselves from Commission on Human Rights resolution 1999/61;

(ix) The joint statement contained in documents E/1998/95 and Add.1, in which 54 delegations disassociated themselves from Commission on Human Rights resolution 1998/8;

(x) The joint letter contained in documents E/CN.4/1998/156 and Add.1, in which 51 delegations expressed their reservations prior to the adoption of Commission on Human Rights resolution 1998/8; and

(xi) The joint statement contained in document E/1997/106, in which 31 delegations disassociated themselves from Commission on Human Rights resolution 1997/12;

(c) In his statement to the plenary of the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998, the President of the Conference declared that the debate at the Conference on the issue of which penalties should be applied by the Court showed that there is no international consensus on the inclusion or non-inclusion of the death penalty, and further that not including the death penalty in the Rome Statute

would not in any way have a legal bearing on national legislations and practices with regard to the death penalty, nor should it be considered as influencing, in the development of customary international law or in any other way, the legality of penalties imposed by national systems for serious crimes. Accordingly, the Rome Statute of the International Criminal Court, which is only applicable to States parties, maintains that nothing in part 7 of the Statute affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this part;

(d) Capital punishment has often been characterized as a human rights issue in the context of the right of the convicted prisoner to life. However, it is first and foremost an issue of the criminal justice system and an important deterring element vis-à-vis the most serious crimes. It must therefore be viewed from a much broader perspective and weighed against the rights of the victims and the right of the community to live in peace and security;

(e) Every State has an inalienable right to choose its political, economic, social, cultural and legal justice systems, without interference in any form by another State. Furthermore, the purposes and principles of the Charter of the United Nations, in particular Article 2, paragraph 7, clearly stipulates that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Accordingly, the question of whether to retain or abolish the death penalty should be carefully studied by each State, taking fully into account the sentiments of its own people, state of crime and criminal policy. It is improper to make a universal decision on this question or to prescribe to Member States actions that fall within their domestic jurisdiction, or attempt to change, by way of a General Assembly resolution, the stipulations under international law that were reached through a comprehensive negotiation process;

(f) Some Member States have voluntarily decided to abolish the death penalty, whereas others have chosen to apply a moratorium on executions. Meanwhile, many Member States also retain the death penalty in their legislations. All sides are acting in compliance with their international obligations. Each Member State has decided freely, in accordance with its own sovereign right established by the Charter, to determine the path that corresponds to its own social, cultural and legal needs, in order to maintain social security, order and peace. No side has the right to impose its standpoint on the other.

The Permanent Missions to the United Nations listed below wish to request the circulation of the present note as a document of the General Assembly.

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2. Bahamas
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5. Barbados
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8. Central African Republic
9. Chad

10. China
11. Comoros
12. Democratic People's Republic of Korea
13. Dominica
14. Egypt
15. Equatorial Guinea
16. Ethiopia
17. Eritrea
18. Fiji
19. Gambia
20. Grenada
21. Guinea
22. Guyana
23. Indonesia
24. Iran (Islamic Republic of)
25. Iraq
26. Kuwait
27. Lao People's Democratic Republic
28. Libyan Arab Jamahiriya
29. Malaysia
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33. Niger
34. Nigeria
35. Papua New Guinea
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47. Thailand

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49. Trinidad and Tobago
50. Uganda
51. United Arab Emirates
52. Yemen
53. Zimbabwe